

Ferrara Law Group, P.C.



February 7, 2023

VIA ECF

Honorable Leda Dunn Wettre, U.S.M.J.
United States District Court
Martin Luther King Bldg & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

**RE: Deborah Gross-Quatrone v. Bonnie Mizdol, et al.
Docket No. 2:17-cv-13111-SDW-LDW**

Dear Judge Wettre:

I would like to revisit informally at first and if necessary, by way of motion, your recent decision concerning Plaintiff's ability to hire a rebuttal expert in connection with the upcoming IME to be performed by Dr. Kenneth Weiss on behalf of defendants.

Upon receipt of your order, I took it upon myself to review the docket and procedural history of the matter during the time I was not counsel to the Plaintiff. Unfortunately, Mr. Dwyer had to remove himself from the case. A review of same shows clear evidence of Plaintiff's countless actions to reserve the right to indeed conduct an IME in response to Dr. Weiss in the event Judge Neals ordered the IME. I have since reviewed this matter with Ms. Dohn. I would like to point out to the court some of the documentation I am referring to:

- On January 27, 2022 (Docket No. #178), the Court specifically acknowledged Plaintiff's position that Dr. Aquaviva would serve as Plaintiff's treating physician and the Court specifically acknowledged in its opinion that Plaintiff was reserving its right to hire an additional expert depending on the outcome of the appeal of your order concerning same
- On October 28, 2021, Plaintiff submitted its required status report and one of the issues addressed was expert discovery. Plaintiff proposed that initial expert reports would be submitted by 12/31/21 and that responsive reports would be submitted by 1/17/22. Thus, from the start Plaintiff reserved the idea of submitting an expert report. This was before Defendants even raised the idea of scheduling an IME. This is Docket No. 156.

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- Ms. Dohn sought and was granted permission to file a Rule 35 Motion for an IME. In granting permission to file the motion on November 16, 2021, Your Honor set the deadline for affirmative expert reports would be revisited after the request for an IME was resolved. This is Docket No. 162.
- Thereafter, Mr. Dwyer's, Plaintiff's counsel raised an issue of clarity concerning expert discovery and sent a number of letters to the Court and Defendants concerning same. On December 3, 2021, Your Honor so ordered that entire expert discovery schedule would be revisited after the IME issue was resolved. This is Docket No. 166.
- Thereafter, Defendants filed their motion for an IME and in a sur reply, Mr. Dwyer, Plaintiff's attorney, set forth that if the IME was ordered over our objections and Defendants served an expert report on emotional distress then we would reserve the right to serve a rebuttal expert report. This is Docket No. 172.
- As set forth above, Your Honor issued a ruling on January 27, 2022 under Docket No. 178 and Plaintiff's position was expressly acknowledged by Your Honor on page 3.
- Plaintiff's position was reiterated to Judge Neals. Please see Docket Nos. 180 and 184. Plaintiff's position was again acknowledged by Judge Neals in Docket No. 186.
- Finally, we have defense counsel's joint letter submitted on January 9, 2023 which expressly provides for Plaintiff to submit a rebuttal report after the IME. Please see Docket Nos. 189 and 193.

Initially, let me apologize for me not being more up to speed and knowledgeable about the record during my absence from the case but, it is clear that Plaintiff reserved the right to somehow address whatever IME report that was going to be issued by Dr. Weiss. I understand that Your Honor wants to move the case and certainly so do the parties but the Plaintiff, under the current scheduling and case management order will not be afforded the ability to rebut Dr. Weiss's report by an expert report of the same caliber by way of education and experience and therefore Plaintiff's case would be prejudiced. Clearly, the record reflects Plaintiff's reservation of these rights as far back as 2021.

This is in no way further substantially delays matters as the IME by Dr. Weiss is indeed taking place on February 8, 2023, as agreed. We respectfully request that Your Honor address this issue further by way of additional conference or if necessary, Plaintiff will file the appropriate motion seeking this relief.



Thank you for your considerations.

Respectfully yours,

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cc: Kathleen Dohn, Esquire